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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

JUL 21 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Toll Free Access Codes )

CC Docket No. 95-155

**FURTHER COMMENTS OF RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. ("RCN"), by its undersigned counsel, hereby submits comments in response to the Public Notice ("Notice") released July 2, 1997 requesting further comments in the above-captioned docket.<sup>1/</sup> RCN is a competitive local exchange carrier operating in the service areas of NYNEX (in New York and Massachusetts) and Bell Atlantic (in Pennsylvania). RCN uses a unique 800 vanity number for advertising--1-800-RING-RCN. RCN files these further comments in this docket to urge the Commission to protect the investment companies have made in vanity numbers by allowing companies that are currently utilizing an 800 vanity number to have a right of first refusal for the same 888 number and in any future toll-free codes. In addition, the Commission should clarify that this right of first refusal will be afforded to the entity that is currently holding the 800 number.

**I. INTRODUCTION**

In its Notice, the Commission explains that it adopted a Notice of Proposed Rulemaking ("NPRM") on October 4, 1995, addressing various issues related to toll free service access codes,

<sup>1/</sup> *Further Comments Toll Free Service Access Codes*, Public Notice, CC Docket No. 95-155 (released July 2, 1997) ("Notice").

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and requesting comment on the issue of vanity-number treatment in future toll free codes.<sup>2/</sup> The Commission notes that the record on the NPRM is now almost two years old and therefore seeks further comment on issues associated with the treatment of vanity numbers, "both with 888 as well as numbers in future toll free codes."

In the NPRM, the Commission proposed to develop rules and procedures governing the "efficient, fair and orderly" assignment of new toll free numbers.<sup>3/</sup> In particular, the Commission noted that significant competitive issues are implicated by the assignment of 888 vanity numbers, when the holders of the equivalent 800 numbers have "invested substantial resources in advertising the number and establishing a reputation for [the 800 number]."<sup>4/</sup> Specifically, the Commission recognized that the assignment of new 888 toll free numbers may have a financial and competitive impact upon those companies that will need to reserve the equivalent 888 vanity number in light of the high visibility and consumer recognition of their existing 800 numbers and the confusion that may ensue if another company reserves the equivalent 888 number. Accordingly, the Commission sought comments on two proposals to address the reservation and assignment of 888 vanity numbers: 1) A right of first refusal for 800 number holders, either free of charge or through a one-time fee or competitive bidding process; or 2) an industrial classification mechanism that would bar a competitor from receiving the equivalent number in any toll free code.

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<sup>2/</sup> *In the Matter of Toll Free Service Access Codes*, Notice of Proposed Rulemaking, CC Docket No. 95-155 (released October 5, 1995) ("NPRM").

<sup>3/</sup> NPRM at ¶ 12.

<sup>4/</sup> *Id.* at ¶ 35,

RCN agrees with the Commission's view that, although toll free numbers are a public resource and neither subscribers nor carriers "own" the numbers, the public interest requires that the Commission develop rules that will recognize an existing user's investment in its current vanity numbers. As discussed below, it is critical to RCN and similar businesses that the rules governing the introduction of new toll free codes prevent customer confusion, lost business and lost investment to incumbent 800 number users. Such confusion and economic loss will surely result if the Commission does not provide incumbent 800 number users with prior rights to equivalent toll free codes. Accordingly, RCN urges the Commission to adopt rules whereby current holders of 800 numbers will have a right of first refusal to receive the equivalent 888 number or the equivalent number in any new toll free series. In addition, the Commission in promulgating such rules should make it clear that the right of first refusal belongs to the company that is currently holding the 800 or other toll-free number.

**II. Existing Holders of 800 Vanity Numbers Should Have a Right of First Refusal to Equivalent 888 and Other Toll Free Numbers**

RCN actively uses and promotes a toll free vanity number for its advertising-- 1-800-RING-RCN. RCN has made a considerable investment in this number and expects to expand that investment in the future.

Because many companies make a considerable investment in identifying itself with a toll free number, the need for protection against "infringing" uses of confusingly similar numbers becomes very important. With that need in mind, RCN urges the Commission to grant the holders of existing toll free 800-prefixed numbers -- including vanity numbers that spell a name or word and vanity numbers in which the 800 holder has an economic or commercial interest -- a right of first refusal on

any equivalent 888 toll free code and subsequent toll free numbers (e.g., 877, 866, etc.). By right of first refusal, RCN proposes that the current 800 vanity code holder should have the right to be assigned any equivalent 888 toll free code and subsequent toll free numbers before those numbers are released into the spare pool of numbers. The Commission should adopt this procedure instead of the current mechanism whereby the 800 code holder can request the equivalent 888 number to be released, but that number is merely placed in the spare pool of 888 numbers and assignment to the current code holder is not guaranteed. RCN believes that current holders of 800 vanity numbers should have the right to have the equivalent 888 number *assigned to them directly*. This proposal is a reasonable approach to permitting the efficient introduction of new toll free codes without causing serious harm to American businesses that have committed significant resources toward the use and promotion of 800 vanity numbers.

### **III. The Right of First Refusal Should Belong to the Company Currently Holding the Toll Free Number**

As the Commission recognized, almost two years have passed since the Commission first requested comments on the issue of vanity number treatment in the 888 toll free code series and subsequent toll free numbers. Similarly, it has been well over a year since the Commission placed 888 vanity numbers on "unavailable" status. During this period, the holders of many toll-free numbers, including vanity numbers, have changed. For example, RCN was not the holder of its vanity code in January 1996. Although 1-888-RING-RCN has been placed on "unavailable" status, RCN requests that the Commission clarify that RCN, as the current holder of the number, would have the right of first refusal on that number and not the company that held the number at the time the 888 code was placed on unavailable status.

This clarification would further the Commission's policies of protecting current investment in toll free numbers. Obviously, if a company is no longer a holder of an 800 toll free vanity number, it is no longer investing in that number and lacks an interest in the equivalent 888 number. However, the company that currently holds the 800 number is making an investment in that number and should have any right of first refusal that the Commission affords to holders of 800 vanity codes.

**IV. Companies Competing in the Same or Related Industries Should  
Not Be Assigned Equivalent Toll Free Codes**

Although RCN shares the Commission's view that companies competing in the same or related industries should not be assigned equivalent toll free vanity codes, the Commission's industrial classification proposal is more cumbersome and less desirable in protecting the rights of businesses using vanity codes than a right of first refusal. First, the proposal is cumbersome in that it requires the Commission to formulate numerous industrial classifications and track the industry of every code holder. It is questionable whether the Commission is in a position to correctly classify the industry of every company, and accurately identify possible competitors.

More importantly, however, the industrial classification scheme fails to address the customer confusion aspect of equivalent toll free vanity codes. Customers will likely be confused as to whether a toll free number has an 800 or 888 prefix. Therefore, there will be numerous customers calling the 888 vanity number with the intention of reaching the 800 vanity number and vice versa. This will cause both companies to lose business and dilute the investments of both companies in recognition of their vanity numbers. Moreover, because many companies have made a significant investment in a toll-free vanity number, they deserve the opportunity to continue to capitalize on that investment by being assigned the equivalent number in the new toll free series.

## V. CONCLUSION

RCN commends the Commission's recognition of the investment that many companies have made in vanity numbers and supports its proposal to adopt rules that would entrust current 800 number holders with a right of first refusal. RCN urges the Commission to adopt this alternative over an industrial classification scheme, which would be cumbersome and would fail to address the customer confusion that would result from such a plan.

Respectfully submitted,

**RCN TELECOM SERVICES, INC.**

By:



Andrew D. Lipman

Pamela S. Arluk

SWIDLER & BERLIN, CHARTERED  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007  
(202) 424-7770

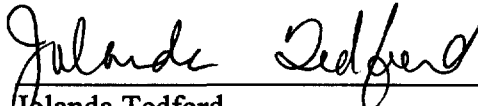
Dated: July 21, 1997

## CERTIFICATE OF SERVICE

I, Jolanda Tedford, do hereby certify on this 21st day of July, 1997, that a copy of the foregoing Further Comments of RCN Telecom Services, Inc. (Docket No. 95-155), was served upon the parties listed below, via courier.

Network Services Division (2 copies)  
Common Carrier Bureau  
Federal Communications Commission  
Room 235  
2000 M Street, N.W.  
Washington, D.C. 20554

ITS, Inc.  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20554

  
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Jolanda Tedford